

RECEIVED

AUG - 9 2011



TONY R. MOORE, CLERK  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

JOHN NOVAK

CIVIL ACTION NUMBER: 09-1098

VERSUS

JUDGE DOHERTY

LAFAYETTE PARISH CONSOLIDATED  
GOVERNMENT, ET AL

MAGISTRATE JUDGE HANNA

**JUDGMENT**

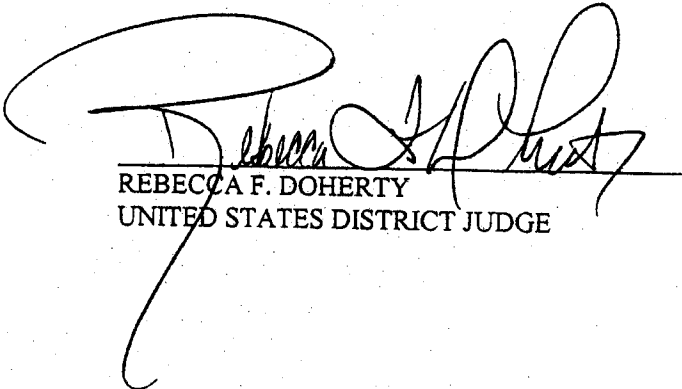
This matter was referred to United States Magistrate Judge Patrick J. Hanna for Report and Recommendation. After a n independent review of the record and objections filed, this Court concludes that the Report and Recommendation of the Magistrate Judge is correct, to the extent it addresses plaintiff's claims of medical malpractice, and adopts the findings and conclusions therein as its own. However, the Court finds plaintiff's claim of deliberate indifference, asserted pursuant to 42 U.S.C. § 1983, and plaintiff's claim of intentional tort, asserted pursuant to state law, were not adequately raised by defendants' motions, and were therefore not addressed by the Magistrate Judge. Accordingly, to the extent defendants' motions impliedly addressed claims of intentional tort and deliberate indifference, the motions are DENIED.

Accordingly, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Advantage Nursing Services, LLC and Cynthia Wiltz, LPN's Rule 12(b)(6) Motion to Dismiss for Prematurity and/or Prescription [rec. Doc. 25] and Advantage Nursing Services, Inc.'s Rule 12(b)(6) Motion to Dismiss for Prematurity and/or Prescription [Rec. Doc. 34] are GRANTED to the extent they seek dismissal of plaintiff's medical malpractice claims, and any medical malpractice claims are DISMISSED WITH PREJUDICE; the motions are DENIED to the extent they seek dismissal of claims made for intentional tort pursuant to state law and to the extent they seek dismissal of

of claims made for intentional tort pursuant to state law and to the extent they seek dismissal of claims asserted pursuant to 42 U.S.C. § 1983.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Nursefinder's Rule 12(b)(6) Motion to Dismiss Based on Prescription is DENIED.

THUS DONE AND SIGNED this 9 day of August, 2011.



REBECCA F. DOHERTY  
UNITED STATES DISTRICT JUDGE